

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 6, 2002

IN RE:)	
)	
SMALL TELEPHONE COMPANIES TARIFF)	DOCKET NO.
FILINGS REGARDING RECLASSIFICATION)	97-01181
OF PAY TELEPHONE SERVICE AS REQUIRED)	
BY FEDERAL COMMUNICATIONS COMMISSION)	
(FCC) DOCKET 96-128)	

**REPORT AND RECOMMENDATION
OF THE PRE-HEARING OFFICER**

At a Status Conference on November 25, 2002, the Pre-Hearing Officer addressed the issues raised in the *Agreed Motion to Suspend Procedural Schedule* jointly filed by the Tennessee Coalition of Small Local Exchange Companies ("Coalition") and the Tennessee Payphone Owners Association ("TPOA") on November 12, 2002. The Coalition and the TPOA sought the suspension in order to pursue settlement negotiations. During the Status Conference, the Pre-Hearing Officer informed the Coalition and the TPOA that he intended to recommend to the panel of Directors assigned to this docket that any settlement approved in this docket be consistent with certain state and federal laws, orders and regulations.

Background

Pursuant to Section 276 of the Telecommunications Act of 1996 (the "Act"), the Federal Communications Commission ("FCC") issued a series of orders for the implementation of

payphone reclassification and compensation in its Docket No. 96-128.¹ The FCC Payphone Orders mandated state commissions to enforce new rules, which, among other things, required telephone companies to file tariffs with state commissions that reclassify their payphones and remove subsidies to payphone operations from other classes of services.

Accordingly, during January, February, and March of 1997 all incumbent local exchange carriers ("ILECs") under the Authority's jurisdiction filed tariffs and revised tariffs to reclassify their payphone operations as mandated by the Act and the FCC Payphone Orders. These tariff filings were opposed by the TPOA, AT&T of the South Central States, Inc. ("AT&T"), MCI Telecommunications Corporation ("MCI") (now WorldCom, Inc.), and the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate"), all of which filed petitions to intervene.

In April and May of 1997, the Authority entered orders which: (1) granted the petitions to intervene;² (2) approved the payphone reclassification tariffs filed by the ILECs pending the outcome of a contested case;³ and (3) opened a combined docket to proceed with the contested case. The combined docket was assigned Docket No. 97-00409. Director H. Lynn Greer, Jr. was appointed Pre-Hearing Officer by the Directors.

At a Pre-Hearing Conference held on May 29, 1997, the Consumer Advocate requested that the Authority bifurcate these proceedings by separating the larger local exchange carriers ("LECs") from the smaller carriers. Based on concerns that the expense of preparing the cost studies necessary to determine the rates of the larger LECs would be too great for the smaller,

¹ See, e.g., *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC Docket No. 96-388 (*Report and Order*) 1996 WL 547458, 11 F.C.C.R. 20,541 (released September 20, 1996); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC Docket No. 96-439 (*Order on Reconsideration*) (Nov. 8, 1996) 11 FCC Rcd 21,233.

² On August 17, 2000, AT&T withdrew its intervention.

³ See Docket No. 97-00409.

independent LECs, the Pre-Hearing Officer ordered the bifurcation. The Pre-Hearing Officer determined that the matters related to the larger LECs, BellSouth Telecommunications, Inc. ("BellSouth"), United Telephone-Southeast, Inc. ("UTSE"), and Citizens Telecommunications Company of Tennessee and Citizens Telecommunications Company of the Volunteer State (collectively "Citizens") would remain in Docket No. 97-00409 and a new docket, Docket No. 97-01181, would be opened to address matters related to the smaller, independent LECs.⁴ The Pre-Hearing Officer memorialized this decision in the *Order Establishing a Separate Docket for the Smaller Companies* entered on June 6, 1997.

Thereafter, by agreement of the parties, the payphone dockets remained inactive for nearly three years until March 21, 2000 when the TPOA filed a letter with the Authority requesting that the Pre-Hearing Officer reconvene the proceeding and set a procedural schedule. On July 21, 2000, the Pre-Hearing Officer filed an order reconvening Docket No. 97-00409 and requesting the parties in Docket Nos. 97-00409 and 97-01181 to file comments concerning how to proceed with the two dockets.⁵ After considering the comments of the parties, the Pre-Hearing Officer filed a July 31, 2000 Order⁶ reflecting his decision to maintain separate proceedings and allow the independent LECs to intervene in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates.

Thereafter, BellSouth, UTSE, Citizens, and the TPOA filed cost studies and testimony in Docket No. 97-00409. After a Hearing on October 25, 2000, the Directors established compliant

⁴ The independent LECs included: Ardmore Telephone Co.; the Century companies consisting of CenturyTel of Adamsville, CenturyTel of Claiborne, and CenturyTel of Ooltewah-Collegedale; Loretto Telephone Co.; Millington Telephone Co.; the TDS companies consisting of Concord Telephone Exchange, Inc., Humphreys County Telephone Co., Tellico Telephone Co., and Tennessee Telephone Co.; the TEC companies consisting of Crockett Telephone Co., Peoples Telephone Co., and West Tennessee Telephone Co.; and United Telephone Co.

⁵ See *Order of Pre-Hearing Officer Denying Motion for Interim Relief, Requesting Comments from Parties to Docket 97-00409 and Setting a Procedural Schedule*, Docket No. 97-00409 (issued July 21, 2000).

⁶ See *Order of Pre-Hearing Officer Continuing Separation of the Docket No. 97-01181, Granting the Tennessee Small Local Exchange Companies Coalition's Petition to Intervene in Docket No. 97-00409*, Docket Nos. 97-00409 and 97-01181 (issued July 31, 2000).

payphone rates for BellSouth and Citizens. The Authority memorialized this decision in the *Interim Order* entered on February 1, 2001.⁷

The rates of UTSE remained unresolved until May 6, 2002, when the *Proposed Payphone Settlement Between TPOA and United* ("Payphone Settlement Agreement") was filed. The Authority approved the Payphone Settlement Agreement, including the UTSE payphone rates proposed therein, at the May 21, 2002 Authority Conference. This decision was memorialized in the *Final Order* entered on June 12, 2002, thereby concluding the proceedings in Docket No. 97-00409 before the Authority.⁸

With the conclusion of Docket No. 97-00409, any benefit that may have been achieved by completing the large company docket prior to taking up the small company docket was realized. Accordingly, at the Authority Conference held on September 9, 2002, the Authority unanimously appointed Director Pat Miller to replace former Director H. Lynn Greer, Jr. as the Pre-Hearing Officer in Docket No. 97-01181 for the purpose of reconvening the docket and preparing this matter for decision by the Authority.

On September 26, 2002, the Pre-Hearing Officer issued a Notice directing the parties to file no later than October 10, 2002 comments and rate proposals for the provisioning of payphone access services to payphone service providers. On October 9, 2002, the Tennessee Coalition of Small Local Exchange Companies filed a *Motion for Extension of Time*. On October 14, 2002, the Pre-Hearing Officer issued the *Order Granting the Request for an*

⁷ BellSouth filed a Petition for Review of the Authority's decision in the Tennessee Court of Appeals on December 29, 2000. On July 16, 2002, the Court of Appeals issued a decision affirming the Authority's decision regarding the imposition of interest on the refund awarded to the TPOA. See *BellSouth Telecommunications, Inc. v. Tennessee Regulatory Authority*, No. M2000-03171-COA-R12-CV, 2002 WL 1558598 (Tenn. Ct. App. July 16, 2002) (Tenn. R. App. P. 11 application filed).

⁸ The terms of the former Directors of the Authority, Chairman Sara Kyle and Directors H. Lynn Greer, Jr. and Melvin J. Malone, expired on June 30, 2002. Chairman Kyle was re-appointed and commenced a new term as Director of the Authority on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three-member voting panel consisting of Chairman Kyle and Directors Deborah Taylor Tate and Ron Jones was randomly selected and assigned to Docket No. 97-01181.

Extension of Time, allowing the parties until November 4, 2002 to file their comments, rate proposals and justifications.

On October 9, 2002, the Coalition filed the *Request of Coalition of Tennessee Small Local Exchange Companies for Extension of Time to File Comments and Rate Proposals as Directed by Notice of Filing Dated September 26, 2002* ("Request"). The Request sought an additional twenty (20) days in which to file comments.⁹ On October 14, 2002, the Pre-Hearing Officer granted the Coalition's Request, directing the independent LECs to file their comments, rate proposals and justifications for rates no later than Monday, November 4, 2002. On the same day, consistent with the September 26, 2002 Notice, Millington Telephone Company ("Millington") filed a tariff.

On November 1, 2002, the Coalition and the TPOA jointly filed the *Agreed Motion for Continuance*, requesting an extension of time until November 11 to file comments. On November 4, 2002, Crockett Telephone Company, Inc., Peoples Telephone Company, Inc. and West Tennessee Telephone Company, Inc. (collectively the "TEC Companies") filed tariffs. The TEC Companies proposed an effective date of November 5, 2002 for implementation of the tariff.¹⁰

At the November 4, 2002 Authority Conference, the Directors determined that the interests of administrative economy and consistency required Millington's rate proposal to be

⁹ The Coalition consists of the following companies: Ardmore Telephone Company, Inc., the CenturyTel. Inc. Companies in Tennessee (including CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc. and CenturyTel of Ooltewah-Collegedale, Inc.), Loretto Telephone Company, Inc., the TDS Telecom Companies in Tennessee (including Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Inc. and Tennessee Telephone Company), the Telephone Electronics Corp. ("TEC") Companies in Tennessee (including Crockett Telephone Company, Inc., Peoples Telephone Company, Inc. and West Tennessee Telephone Company, Inc.) and Untied Telephone Company, Inc. Millington is not a member of the Coalition.

¹⁰ At the December 2, 2002 Authority Conference, the panel determined that the interests of administrative economy and consistency required the TEC Companies' rate proposal to be considered simultaneously with the rate proposals of the Coalition and unanimously voted to defer action on TEC Companies' payphone tariff filing for ninety (90) days, from November 5, 2002 through February 2, 2003. On December 4, 2002, the TEC Companies filed a notice of their intent to withdraw the tariffs filed on November 4, 2002.

considered simultaneously with the rate proposals of the Coalition. Accordingly, the Directors voted unanimously to defer action on Millington's payphone tariff filing for ninety (90) days, from November 14, 2002 through February 11, 2003.

On November 4, 2002, the Pre-Hearing Officer issued an Order granting the *Agreed Motion for Continuance* and directing the parties to file comments, rate proposals and justifications for rates no later than Tuesday, November 12, 2002. On November 12, 2002, the Coalition and the TPOA jointly filed the *Agreed Motion to Suspend Procedural Schedule*, requesting that the November 12, 2002 deadline for filing comments, rate proposals and justifications for rates be suspended indefinitely to allow for additional settlement negotiations. The Pre-Hearing Officer scheduled a Pre-Hearing Conference on November 25, 2002.

The November 25, 2002 Pre-Hearing Conference

On November 25, 2002, the Pre-Hearing Officer convened a Pre-Hearing Conference to address the issues raised in the *Motion to Suspend Procedural Schedule*. The parties in attendance at the Pre-Hearing Conference included:

Tennessee Coalition of Small Local Exchange Companies – **R. Dale Grimes, Esq.**, Bass, Berry & Sims, PLC, 315 Deaderick St., Suite 2700, Nashville, TN 37238.¹¹

Tennessee Payphone Owners Association -- **Henry Walker, Esq.**, Boulton, Cummings, Connors & Berry, 414 Union St., No. 1600, Nashville, TN 37219.

At the Pre-Hearing Conference, the Pre-Hearing Officer temporarily suspended the procedural schedule to facilitate settlement negotiations. During the ensuing discussion on the status of such negotiations and the parameters of an acceptable settlement agreement, the parties' dispute on the issue of whether 47 U.S.C. § 276 was applicable to this case became apparent. The applicability of § 276 is fundamental to the resolution of this matter.

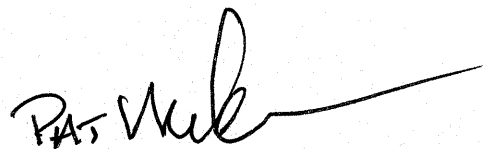
¹¹ The following members of the Coalition attended the Pre-Hearing Conference: Bruce Mottern of the TDS Telecom Companies in Tennessee, Desda Hutchins of Loretto Telephone Co. and Dave Dickey of CenturyTel of Adamsville, CenturyTel of Claiborne and CenturyTel of Ooltewah-Collegedale.

Recommendation

Accordingly, it is recommended that the panel resolve the issue of the applicability of 47 U.S.C. § 276 to this case before the parties file their comments, rate proposals and justifications. The parties are hereby directed to brief the issue of whether 47 U.S.C. § 276, as interpreted by the Federal Communications Commission, is applicable to this case.¹² The parties shall file such briefs no later than **Friday, December 20, 2002**. To facilitate additional settlement negotiations, the suspension of the Procedural Schedule shall remain in effect for thirty (30) days from the date the Authority resolves the issue of the applicability of 47 U.S.C. § 276. In the event that no settlement is reached, the parties shall file comments, rate proposals and justifications no later than **thirty (30) days** from the date the Authority resolves the above-stated issue. Responses shall be filed no later than **fifteen (15) days** from the date the comments, rate proposals and justifications are filed.

Having established a Procedural Schedule and prepared this docket for a Hearing, the Pre-Hearing Officer hereby recommends that the panel find that his duties are concluded.

Respectfully submitted,



Pat Miller, Pre-Hearing Officer

12-6-02

¹² See *In the matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunication Act of 1996*, CC Docket No. 96-128, FCC Docket No. 96-388 (*Report and Order*) 1996 WL 547458, 11 F.C.C.R. 20,541 (released September 20, 1996) ¶ 76; *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC Docket No. 96-439 (*Order on Reconsideration*) 1996 WL 658824, 11 F.C.C.R. 21,233 (released November 8, 1996) ¶¶ 162-165.